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No. 79-1460

In the Supreme Court of the United States

OCTOBER TERM, 1979

NATIONAL VAN LINES, INC. AND TRANSPORT INDEMNITY COMPANY, PETITIONERS

v.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3a-31a) is reported at 613 F. 2d 972. The final opinion of the Benefits Review Board (Pet. App. 32a-40a) is reported at 7 B.R.B.S. 445. The Board's earlier opinion (Pet. App. 41a-50a) is reported at 1 B.R.B.S. 449. The original opinion of the administrative law judge (Pet. App. 51a-73a) and his opinion on remand are unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 13, 1979. A petition for rehearing was denied on December 19, 1979 (Pet. App. 1a-2a). The petition for a writ of certiorari was filed on March 18, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the court of appeals correctly concluded that the District of Columbia had a "substantial connection" with the employee-employer relationship in this case, so as to allow application of the District of Columbia Workmen's Compensation Act.

2. Whether the Full Faith and Credit Clause bars an award of workers' compensation in one jurisdiction following an award in another jurisdiction whose statute states only in general terms that the benefits it confers are the exclusive remedy against the employer.

STATEMENT

1. Respondent James A. Riley, III, is permanently totally disabled, a quadriplegic, as a result of injuries sustained during the regular course of his employment as a driver for Eureka Van & Storage Company (Eureka) (Pet. App. 6a). On January 7, 1966, respondent Riley was driving a truck in the employ of Eureka, which was serving as agent for petitioner National Van Lines, Inc. (National) (*ibid.*),[1] when the truck "jackknifed" on an icy road near Buffalo, New York, and struck an abutment (*id.* at 57a).

Now defunct, Eureka was owned and managed by respondent Riley's father (Riley, Sr.) (Pet. App. 5a, 52a-53a). Eureka was headquartered in Fairfax County, Virginia, and served the metropolitan Washington, D.C. area (*id.* at 52a). Riley, Sr., testified without contradiction that Eureka had maintained a telephone answering service

[1]The court of appeals found Eureka to be a subcontractor of National within the meaning of Section 4(a) of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 904(a), as extended by the District of Columbia Workmen's Compensation Act, D.C. Code §§ 36-501 and 36-502 (1973) (Pet. App. 24a-28a).

in the District[2] and had regularly sent its employees into the District on business (Pet. App. 14a-15a, 46a, 52a-53a). Respondent Riley himself made an average of one or two business trips per week into the District for the five years prior to his accident (*id.* at 15a, 46a, 58a). On the trip that ended in the accident, respondent Riley was delivering goods picked up in the District, Virginia and Maryland. The goods originating in the District had been delivered on the day before the accident (*id.* at 7a, 43a, 58a).

While respondent Riley was in the hospital, his father reported the accident to the Industrial Commission of Virginia and executed a compensation agreement with Eureka's Virginia insurance carrier as "attorney in fact" for respondent Riley (Pet. App. 7a, 44a, 59a). The Industrial Commission approved the agreement, which provided respondent Riley the maximum benefits then permitted under Virginia law—$39.00 per week for 400 weeks and medical expense payments for two years (*ibid.*). The medical benefits terminated in January 1968, and the periodic compensation benefits ended in October 1973 (*id.* at 59a).

2. On May 2, 1972, respondent Riley filed a claim for benefits under the District of Columbia Workmen's Compensation Act (Pet. App. 7a). The claim was dismissed for lack of jurisdiction by an administrative law judge on the grounds that (1) the District of Columbia had no substantial interest in the case and thus the District of Columbia statute did not apply and (2) the claim was barred by the statute of limitations (*id.* at 51a-73a). The Benefits Review Board reversed and remanded (*id.* at 41a-50a). The Board held that "activities pursuant to the

[2]In his initial decision, the administrative law judge made no mention of this evidence, but generally discounted Riley, Sr.'s testimony (Pet. App. 62a-63a; see also *id.* at 14a n.26). In its first decision, the Benefits Review Board treated this fact as undisputed (*id.* at 43a). On remand, the administrative law judge made a finding to the contrary, which the Board subsequently vacated (*id.* at 36a-37a).

employment relationship between Riley and Eureka were carried out in the District of Columbia regularly over a period of years" and thus there was "substantial contact between the employer-employee relationship and the District of Columbia in this case which is sufficient in degree to permit application of the [District of Columbia] Act to Riley's claim" (Pet. App. 46a).

On remand, the administrative law judge found that respondent Riley was entitled to benefits, and the Benefits Review Board affirmed this aspect of the decision (Pet. App. 32a-40a).[3] On appeal, the court of appeals affirmed the Board's holding that respondent Riley was entitled to benefits under the District of Columbia Act (*id.* at 10a-18a, 29a).[4] The court noted that its review of whether the District of Columbia Act applied to the claim was limited both by the presumption of jurisdiction under the Act, 33 U.S.C. 920(a) (Pet. App. 13a-14a), and by the court's limited standard of review of Board decisions (*id.* at 12a). The court then concluded that the fact that Eureka served many customers in the District and regularly sent its employees, including respondent Riley, there on business provided the requisite "substantial connection" between the District and Riley's employment with Eureka (*id.* at 14a-18a). Relying primarily on *Industrial Commission* v. *McCartin*, 330 U.S. 622 (1947), the court also rejected petitioners' argument that, under the Full Faith and Credit Clause, the workers'

[3]The administrative law judge found that Eureka was an uninsured subcontractor of National within 33 U.S.C. 904(a) and awarded Riley benefits against National for permanent total disability under the Act (Pet. App. 8a). On appeal, the Benefits Review Board declined to reconsider the jurisdictional issue that it had resolved earlier (*id.* at 37a). However, the Board reversed as to National's liability, concluding that Eureka was not a subcontractor under the Act (*id.* at 38a-39a).

[4]The court of appeals reversed as to Eureka's status as a subcontractor, reimposing liability on National (Pet. App. 24a-28a). This issue is not contested here.

compensation agreement entered in Virginia acted as a bar to a supplemental award under the District of Columbia statute (Pet. App. 16a-17a n.31).[5]

ARGUMENT

1. Petitioners do not contend that the District of Columbia statute does not apply to respondent Riley's claim. D.C. Code § 36-501 expressly applies to "the injury or death of an employee of an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs * * *." Rather, petitioners assert (Pet. 10-19) that application of the statute to the facts of this case violates the Due Process Clause. This contention is without merit.

Contrary to petitioners' contention (Pet. 10), the court of appeals did not rule that work or residence in the Washington, D.C. metropolitan area qualified as a "substantial connection" between the employment relationship and the District of Columbia sufficient to permit application of its workers' compensation statute. Nor did the court suggest generally that contacts with the metropolitan area could be treated as contacts with the District. The court simply noted in passing that, in light of the general irrelevance of local boundaries to the conduct of business in the metropolitan area, whether a company's office was in the District or in suburban Virginia was not of great significance in the context of the policies of the Act (Pet. App. 11a).

[5]Judge Tamm dissented on the ground that the injury was not covered by the District of Columbia statute and, in any event, the court of appeals for the District of Columbia Circuit lacked subject matter jurisdiction under the review provisions of 33 U.S.C. 921(c) (Pet. App. 30a-31a). This latter point was not raised by the parties below when the case was heard on the merits and it is not presented here (see *id.* at 30a-31a n.*).

The court rested its decision solely on the connection between respondent Riley's employment relationship with Eureka and the District of Columbia proper. The court found that Eureka served many customers in the District and regularly sent its employees into the District on business. Indeed, respondent Riley himself traveled into the District on Eureka business on an average of once or twice a week for five years, and he had done so on the trip that resulted in the disabling injuries. Applying this Court's test that requires "some substantial connection between the District and the particular employee-employer relationship" (*Cardillo* v. *Liberty Mutual Insurance Co.*, 330 U.S. 469, 476 (1947)), the court concluded that the test was satisfied here. This decision is in accord with other court of appeals decisions on similar facts. See *Director, OWCP* v. *Boughman*, 545 F. 2d 210 (D.C. Cir. 1976); *Pettus* v. *American Airlines Inc.*, 587 F. 2d 627 (4th Cir. 1978), cert. denied, No. 78-1739 (Oct. 1, 1979); *REA Express* v. *Del Borrel*, 573 F. 2d 1306 (4th Cir. 1978) (unpublished opinion), aff'g 2 B.R.B.S. 344 (1975); and cases cited at Pet. App. 18a n.34. In any event, the decision below is a fact-bound application of principles established by this Court and does not warrant further review.

2. Petitioners also contend (Pet. 8-10) that, in light of respondent Riley's receipt of workers' compensation benefits under Virginia law, the Full Faith and Credit Clause bars the recovery of a supplemental award under the District of Columbia statute. This question is presented in *Thomas* v. *Washington Gas Light Co.*, No. 79-116 (argued Mar. 19, 1980). For the reasons set out in our brief in that case, we believe that the court of appeals correctly rejected petitioners' contention. The petition in this case should be held pending the Court's disposition of *Thomas*.

CONCLUSION

The petition for a writ of certiorari on the question of due process should be denied. On the full faith and credit question, the petition should be disposed of as appropriate in light of *Thomas* v. *Washington Gas Light Co.*, No. 79-116.

Respectfully submitted.

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